

NTSB Order No. EA-4947

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD  
at its office in Washington, D.C.  
on the 7th day of February, 2002

Respondent .

### OPINION AND ORDER

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the appeal.

The Administrator's complaint alleged:

1. At all times material herein you were and are now the holder of Airline Transport Pilot Certificate No. 312763777.

2. On or about February 25, 1997, you were convicted in the Doraville Municipal Court, Doraville, Georgia, of Driving Under the Influence (DUI).

3. That conviction is an alcohol-related motor vehicle action which you are required to report to the Federal Aviation Administration (FAA), Civil Aviation Security Division, not later than 60 days after the motor vehicle action.

4. Incident to paragraphs 2 and 3 above, you did not report that motor vehicle action.

The Administrator alleged that the failure to report the 1997 DUI was a violation of section 61.15(e), and sought a 30-day suspension of all airman certificates held by

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(continued . . .)

**Sec. 61.15 Offenses involving alcohol or drugs.**

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(e) Each person holding a certificate issued under this part shall provide a written report of each motor vehicle action to the FAA, Civil Aviation Security Division (AMC-700), P.O. Box 25810, Oklahoma City, OK 73125, not later than 60 days after the motor vehicle action....

(f) Failure to comply with paragraph (e) of this section is grounds for:

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(2) Suspension or revocation of any certificate, rating, or authorization issued under this part.

respondent.

Respondent, in his answer to the Administrator's complaint, admitted the allegations in each paragraph of the complaint and admitted a violation of section 61.15(e), but asserted that, nonetheless, the "action is barred" by the stale complaint rule.<sup>3</sup> Respondent therefore moved to dismiss the complaint as stale. In support of her opposition to the stale complaint motion, the Administrator submitted an affidavit from Mark W. Sweeney, Manager of the Compliance and Enforcement Branch of the Civil Aviation Security Division. From Mr. Sweeney's affidavit, and other portions of the record, it is apparent that the National Driver Register ("NDR") provides the FAA with a list of

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<sup>3</sup> The Stale Complaint Rule (49 C.F.R. § 821.33) states, in pertinent part:

Where the complaint states allegations of offenses which occurred more than 6 months prior to the Administrator's advising respondent as to reasons for proposed action under section 609 of the Act, respondent may move to dismiss such allegations pursuant to the following provisions:

(a) In those cases where a complaint does not allege lack of qualification of the certificate holder:

(1) The Administrator shall be required to show by answer filed within 15 days of service of the motion that good cause existed for the delay, or that the imposition of a sanction is warranted in the public interest, notwithstanding the delay or the reasons therefor.

(2) If the Administrator does not establish good cause for the delay or for imposition of a sanction notwithstanding the delay, the law judge shall dismiss the stale allegations and proceed to adjudicate only the remaining portion, if any, of the complaint....

"matches," i.e, the names of airmen against whom one of the fifty states has taken some type of motor vehicle action. Additional work is needed, however, to determine if the motor vehicle action is a reportable offense under section 61.15, and, if it is, whether the airman reported it to the FAA.<sup>4</sup> Mr. Sweeney's affidavit, in relevant part, also describes the investigative activities that led to the discovery of respondent's 61.15(e) violation, as well as the course of events after its discovery:

- 10) [ ]May 16, 1997: Computer Tape Number 970210006, containing matches on 82 individuals (including that of the Respondent) was received by AMC-700 from NDR along with one other tape....
- 16) [ ]May 19, 1997: Ms. Bussing completed her processing of the related and deleted names concerning Tape Number 970210006 and gave all listings and printouts to Mr. Ritchards. Mr. Ritchards sent tape Number 970210006 and all contents to Special Agent Fields to be worked.
17. Due to the transfer of Special Agent Fields to a new [out-of-state] assignment ..., Tape Number 970210006 was reassigned on ... September 16, 1997, to Special Agent Sloan.
18. Due to the transfer of Special Agent Sloan to a new position ..., Tape Number 970210006 was reassigned on ... October 27, 1997, to Special Agent Simpson.
19. On ... October 27, 1997, the day she was assigned the tape, Special Agent Simpson was in the process of investigating possible violations concerning airmen contained in two previously-assigned tapes which contained 202

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<sup>4</sup> It appears from this record that this additional work is, in essence, a query of a national database -- National Law Telecommunications System ("NLETS") -- to determine the nature of the motor vehicle action referenced in the NDR list.

matches. Prior to initiating investigative action concerning Tape Number 970210006, she completed the review of the [NLETS] responses on the 202 individuals and completed formal investigations including writing enforcement reports on those airmen where violations were discovered.

20. []February 4, 1998: Special Agent Simpson initiated the investigation concerning Tape Number 970210006 by electronically interrogating NLETS. Special Agent Simpson received a positive electronic response from NLETS concerning Mr. Ramaprakash indicating the existence of an alcohol-related motor vehicle violation for DUI in the State of Georgia....<sup>5</sup>
24. []March 6, 1998: Special Agent Simpson receives the Respondent's response to the LOI. At this time, Special Agent Simpson reviews the status of all of the investigations that she is currently working, prioritizes them and begins completion of the Enforcement Investigative Reports (EIR) for each investigation....
28. []April 22, 1998: The Notice of Proposed Certificate Action [("NOPCA")] was completed and mailed to the Respondent by AMC-700....

In order to avoid dismissal under the stale complaint rule where a NOPCA is issued more than six months after the alleged offense has occurred, the Administrator must show that good cause existed for the delay in discovering the offense and that, upon discovery, she investigated the matter with due diligence, Administrator v. Ikeler, NTSB Order No. EA-4695 at 4 (1998), or that imposition of sanction is warranted notwithstanding any

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<sup>5</sup> After a diligent search of FAA records indicated that respondent had not reported the DUI conviction, as required, a letter of investigation was sent six days later, on February 10, 1998.

delay. 49 C.F.R. § 821.33(a)(1). The law judge, citing Ikeler, focused on the time period from when the NLETS query notified the Administrator that respondent's offense was an alcohol-related motor vehicle offense and concluded that, from that time, the Administrator's handling of the matter was sufficiently expeditious to meet the good cause exception to the stale complaint rule and therefore declined to dismiss the Administrator's charges.

On appeal, respondent complains that despite obtaining an NDR tape listing respondent's name in May 1997, the Administrator allowed nearly nine months to elapse before querying NLETS to learn of the nature of respondent's motor vehicle offense, and, therefore, the law judge erred in not dismissing the Administrator's complaint as stale. The Administrator urges us to uphold the law judge's ruling.

Although the NDR listed respondent's name, the Administrator did not have an indication of a possible section 61.15(e) violation until her NLETS query indicated that the NDR listing was in reference to a reportable alcohol-related motor vehicle action, and we agree with the law judge that the Administrator proceeded with sufficient dispatch after learning of it during the February 4, 1998 NLETS query. See Administrator v. Brea, NTSB Order No. EA-3657 at 3 (1992) ("belated awareness may serve as good cause ... provided that reasonable prosecutorial diligence is exercised after ... receipt of information ... indicative of ... a violation"). Moreover, respondent admitted to the factual allegations and the regulatory violation cited in

the Administrator's complaint, and he does not assert that, had the complaint been filed sooner, he would have answered differently or been better equipped to defend against the Administrator's allegations. See Administrator v. Gotisar, NTSB Order No. EA-4544 at 3 (1997) ("the purpose of the stale complaint rule is to ensure that respondents are not denied the opportunity to prepare a defense as a result of the Administrator's tardiness in giving notice"); Administrator v. Zanolunghi, 3 NTSB 3696, 3697 (1981) ("stale complaint rule is premised largely on the belief that excessive delay ... can prejudice the answerable individual's ability to defend against the charge").

In these circumstances, specifically, where a respondent's ability to defend against a charge has not been compromised by the passage of time between the admitted violation and the action to sanction it, it would be arbitrary to dismiss the complaint under a rule designed to forestall evidentiary difficulties that can arise because of prosecutorial delay. Indeed, it would be particularly difficult to justify in a case of this kind, given the importance to air safety of monitoring the alcohol-related infractions of certificated airmen, and the likelihood that they would go undetected but for the self-disclosure requirements of FAR section 61.15(e).

At the same time, we must confess that we are troubled by the length of time, 264 days, that elapsed between the Administrator's

receipt of the NDR tape containing respondent's name and her agent's eventual review of that tape.<sup>6</sup> However, because our ruling in Ikeler sustained a suspension order which involved a similar delay, the Administrator had no reason in this case to anticipate that we might view the issue differently. Whether Ikeler is followed in future cases may well depend on the magnitude of the delay, for at some point, we are inclined to believe, the Administrator's interest in prioritizing her enforcement efforts<sup>7</sup> will not outweigh the negative impact of forcing an airman to answer a charge long after the conduct giving rise to it.<sup>8</sup>

**ACCORDINGLY, IT IS ORDERED THAT:**

1. Respondent's appeal is denied; and
2. The Administrator's Order of Suspension is affirmed.<sup>9</sup>

BLAKEY, Chairman, CARMODY, Vice Chairman, and BLACK, Member of

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<sup>6</sup> In this regard, we reject the Administrator's claim that "the earliest the Administrator could have known of the violation was February 4, 1998." Admin. Br. at 13 (emphasis added).

<sup>7</sup> The timing of the Administrator's discovery of potentially actionable information is, of course, largely a function of the resources she brings to bear on the task. This record contains precious little explanation for the Administrator's slowness in processing the tapes. Our concern, of course, is that our decision in Ikeler could create a disincentive to move more quickly.

<sup>8</sup> It seems likely, moreover, that the utility of information on alcohol or drug offenses on licensing decisions is related to its timeliness.

<sup>9</sup> For purposes of this order, respondent must physically surrender his airman certificate(s) to an appropriate representative of the FAA pursuant to FAR § 61.19(f).



the Board, concurred in the above opinion and order. HAMMERSCHMIDT and GOGLIA, Members, did not concur. Member GOGLIA submitted the following dissenting statement, in which Member HAMMERSCHMIDT joined.

The stale complaint rule (49 CFR 821.33) is simple, straightforward and clear. If more than 6 months elapse, then the Administrator shall be required to show good cause. Good cause was not established (shown) in this case.

I specifically do not agree with the language in the opinion that suggests that the stale complaint rule is diluted by a balancing of the "Administrator's interest in prioritizing her enforcement efforts...(against)...the negative impact of forcing an airman to answer a charge long after the conduct giving rise to it." There either 'is' a stale complaint rule, or there 'is not'.